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17 ENGINEERS, INC. D/B/A SCS ENERGY

18 UNITED STATES DISTRICT COURT
19 CENTRAL DISTRICT OF CALIFORNIA

20 ISM INDUSTRIES, INC.,
21 Plaintiff,

22 vs.

23 STEARNS, CONRAD AND
24 SCHMIDT, CONSULTING
25 ENGINEERS, INC. D/B/A SCS
26 ENERGY, MITCHELL ENERGY
27 SERVICES, LLC, AND KILGORE
28 INDUSTRIAL CIVIL, L.L.C.,
Defendants.

Case No. 2:19-cv-01134-JAK-JC

**DEFENDANT STEARNS, CONRAD
AND SCHMIDT, CONSULTING
ENGINEERS, INC. D/B/A SCS
ENERGY'S ANSWER AND
AFFIRMATIVE DEFENSES TO
PLAINTIFF ISM INDUSTRIES,
INC.'S COMPLAINT**

Hon. John A. Kronstadt

Trial Date: None Set

1 Defendant Stearns, Conrad and Schmidt, Consulting Engineers, Inc., d/b/a/
 2 SCS Energy (“SCS”) files this Answer and Affirmative Defenses in response to the
 3 Complaint filed by Plaintiff ISM Industries Inc. (“ISM”) as follows:

4 **RESPONSES TO ALLEGATIONS**

5 Responding to the individually numbered paragraphs of ISM’s Complaint,
 6 SCS admits, denies, and avers as set forth below. Any allegations not specifically
 7 admitted by SCS are denied.

8 1. The allegations of paragraph 1 are a legal conclusion to which no
 9 response is required. To the extent an answer is required, the allegations of
 10 paragraph 1 are denied.

11 2. The allegations of paragraph 2 are denied.

12 3. SCS lacks knowledge or information sufficient to form a belief about
 13 the truth of the allegations of paragraph 3 with respect to ISM, Mitchell Energy
 14 Services, LLC (“Mitchell”) or Kilgore Industrial Civil, LLC (“Kilgore”). SCS
 15 admits that it is a corporation organized under the laws of the Commonwealth of
 16 Virginia. The balance of the allegations in paragraph 3 are denied.

17 4. SCS either (a) lacks knowledge or information sufficient to form a
 18 belief about the truth of the allegations of paragraph 4, or (b) the allegations of
 19 paragraph 4 contain legal conclusions to which no response is required. To the
 20 extent a response is required, the allegations with respect to legal conclusions in
 21 paragraph 4 are denied. Further responding to the allegations in paragraph 4, the
 22 balance of the allegations in paragraph 4 are denied.

23 5. SCS admits that in September 2017, SCS issued “Service Purchase
 24 Order 06-SO00030” (the “Subcontract”) to ISM as a subcontractor to perform work
 25 on a biomethane facility at the Woolworth Road Landfill in Shreveport, Louisiana
 26 (the “Project”). Further responding to the allegations of paragraph 5, SCS avers that
 27 the terms of the Subcontract, including, but not limited to, terms relating to change
 28 orders under the Subcontract, speak for themselves. Further responding to the

1 allegations in paragraph 5, SCS either (a) lacks knowledge or information sufficient
2 to form a belief about the truth of the allegations of paragraph 5, or (b) the
3 allegations of paragraph 5 contain legal conclusions to which no response is
4 required. To the extent a response is required, the allegations with respect to legal
5 conclusions in paragraph 5 are denied. Further responding to the allegations in
6 paragraph 5, the balance of the allegations in paragraph 5 are denied.

7 6. SCS either (a) lacks knowledge or information sufficient to form a
8 belief about the truth of the allegations of paragraph 6, or (b) the allegations of
9 paragraph 6 contain legal conclusions to which no response is required. To the
10 extent a response is required, the allegations with respect to legal conclusions in
11 paragraph 6 are denied. Further responding to the allegations in paragraph 6, the
12 balance of the allegations in paragraph 6 are denied.

13 7. SCS either (a) lacks knowledge or information sufficient to form a
14 belief about the truth of the allegations of paragraph 7, or (b) the allegations of
15 paragraph 7 contain legal conclusions to which no response is required. To the
16 extent a response is required, the allegations with respect to legal conclusions in
17 paragraph 7 are denied. Further responding to the allegations in paragraph 7, the
18 balance of the allegations in paragraph 7 are denied.

19 8. SCS either (a) lacks knowledge or information sufficient to form a
20 belief about the truth of the allegations of paragraph 8, or (b) the allegations of
21 paragraph 8 contain legal conclusions to which no response is required. To the
22 extent a response is required, the allegations with respect to legal conclusions in
23 paragraph 8 are denied. Further responding to the allegations in paragraph 8, the
24 balance of the allegations in paragraph 8 are denied.

25 9. SCS either (a) lacks knowledge or information sufficient to form a
26 belief about the truth of the allegations of paragraph 9, or (b) the allegations of
27 paragraph 9 contain legal conclusions to which no response is required. To the
28 extent a response is required, the allegations with respect to legal conclusions in

1 paragraph 9 are denied. Further responding to the allegations in paragraph 9, the
2 balance of the allegations in paragraph 9 are denied.

3 10. SCS either (a) lacks knowledge or information sufficient to form a
4 belief about the truth of the allegations of paragraph 10, or (b) the allegations of
5 paragraph 10 contain legal conclusions to which no response is required. To the
6 extent a response is required, the allegations with respect to legal conclusions in
7 paragraph 10 are denied. Further responding to the allegations in paragraph 10, the
8 balance of the allegations in paragraph 10 are denied.

9 11. The allegations of paragraph 11 are a legal conclusion to which no
10 response is required. To the extent an answer is required, the allegations of
11 paragraph 11 are denied.

12 12. The statement in paragraph 12 relating to notice under Tex. R. Civ. P.
13 193.7 does not require a response. To the extent an answer is required, the
14 statement is denied.

15 13. SCS denies that it is required to provide disclosures pursuant to 194 of
16 the Texas Rules of Civil Procedure.

17 SCS denies ISM's entitlement to the relief prayed for following paragraph

18 **AFFIRMATIVE DEFENSES**

19 SCS further answers the Complaint by asserting the following affirmative
20 defenses reserving the right to assert any additional defenses should such defenses
21 become apparent following discovery.

22 **FIRST AFFIRMATIVE DEFENSE**

23 1. ISM's Complaint should be dismissed because it fails to state a claim
24 upon which relief can be granted.

25 **SECOND AFFIRMATIVE DEFENSE**

26 2. ISM's claims are barred by the doctrines of prior material breach,
27 waiver, and estoppel.

1 THIRD AFFIRMATIVE DEFENSE

2 3. ISM's claims should be dismissed because they are barred by the
3 doctrine of unclean hands.

4 FOURTH AFFIRMATIVE DEFENSE

5 4. ISM's claims should be denied because they are barred by the doctrine
6 of laches.

7 FIFTH AFFIRMATIVE DEFENSE

8 5. ISM's damages, if any, are caused by its own acts or omissions, or the
9 acts or omissions of third parties other than SCS.

10 SIXTH AFFIRMATIVE DEFENSE

11 6. ISM's claims are barred in whole or in part because ISM has suffered
12 no damages as a result of the alleged conduct.

13 SEVENTH AFFIRMATIVE DEFENSE

14 7. ISM's claims are barred by accord and satisfaction.

15 EIGHTH AFFIRMATIVE DEFENSE

16 8. ISM's claims are barred because ISM has not met all conditions
17 precedent and otherwise failed to comply with contract provisions regarding
18 asserting such claims.

19 NINTH AFFIRMATIVE DEFENSE

20 9. ISM's claims are barred to the extent ISM seeks consequential
21 damages that were waived under the terms of its contracts.

22 **PRAYER FOR RELIEF**

23 WHEREFORE, Defendant Stearns, Conrad and Schmidt, Consulting
24 Engineers, Inc. d/b/a SCS Energy respectfully requests that:

25 1. Judgment be entered in favor of SCS and against ISM on all counts of
26 ISM's Complaint;

27 2. Judgment be entered in favor of SCS and against ISM for breach of
28 contract in an amount to be proven at trial, but which is believed to exceed

1 \$720,000;

2 3. That SCS be awarded attorney's fees;

3 4. That all costs of this action be taxed against ISM; and

4 5. For such other and further relief as this Court may deem just and
5 proper.

6
7 Dated: March 7, 2019

MANATT, PHELPS & PHILLIPS, LLP
Craig J. de Recat

8
9 By: /s/ Craig J. de Recat

Craig J. de Recat
*Attorneys for Defendant and
Counterclaimant*
STEARNS, CONRAD AND
SCHMIDT, CONSULTING
ENGINEERS, INC. D/B/A SCS
ENERGY

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14 JONES WALKER LLP
15 Christopher D. Cazenave

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17 By: /s/ Christopher D. Cazenave

Christopher D. Cazenave
Pro Hac Vice
*Attorneys for Defendant and
Counterclaimant*
STEARNS, CONRAD AND
SCHMIDT, CONSULTING
ENGINEERS, INC. D/B/A SCS
ENERGY

PROOF OF SERVICE OF DOCUMENT

I am over the age of 18 and not a party to this case. My business address is 11355 West Olympic Boulevard Los Angeles, California 90064-1614.

A true and correct copy of the foregoing document described as **DEFENDANT STEARNS, CONRAD AND SCHMIDT, CONSULTING ENGINEERS, INC. D/B/A SCS ENERGY'S ANSWER AND AFFIRMATIVE DEFENSES TO PLAINTIFF ISM INDUSTRIES, INC.'S COMPLAINT** was served in the manner indicated below:

I. TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING – Pursuant to controlling General Order(s), the foregoing document will be served by the court via the CM/ECF docket for this case and determined that the following(ing) person(s) are on the Electronic Mail Notice List to receive transmission at the email addresses indicated below:

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I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

March 7, 2019
Date

Craig J. de Recat
Type Name

/s/ Craig J. de Recat
Signature